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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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SUMMARY

Miller Broadcasting, Inc. is licensee of television station

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of) MM Docket No. 93-8
)
Implementation of Section 4(g))
of the Cable Television Consumer)
Protection Act of 1992)
)
Home Shopping Station Issues)

TO: The Commission

COMMENTS OF MILLER BROADCASTING, INC.
(KMCI-TV)

Miller Broadcasting, Inc. ("Miller" or "KMCI"), licensee of
television broadcast station KMCI-TV, Lawrence, Kansas, through its
attorney, submits its Comments in the captioned proceeding.

KYFC	Channel 50	678 kw,	1119 feet AAT
KCPT	Channel 19	105 kw,	1701 feet AAT

Topeka is city of license for

KTWU	Channel 11	PBS, 316 kw	1000 feet AAT
WIBW-TV	Channel 13	CBS, 204 kw	1380 feet AAT
KSNT	Channel 27	NBC, 912 kw	1050 feet AAT
KTKA-TV	Channel 49	ABC, 347.5 kw	1507 feet AAT

Signals from both Kansas City and Topeka are regularly received in Lawrence.

Miller's station, KMCI, operates with 5000 kw, and an antenna height of 1038 feet above ground. It has no network affiliation, and receives no non-local programming other than that furnished by HSN. It is carried on no cable system other than that of TeleCable, Overland Park, Kansas. Within the Topeka ADI, KMCI is the only UHF station operating after midnight. Should WIBW, Channel 13 go off the air during the early morning hours, KMCI would be the only source of EBS warnings.

History

Station KMCI-TV 38 is licensed to Miller Broadcasting, Inc. Its city of license is Lawrence, Kansas and it serves the greater Kansas City and Topeka television markets. Monte and Doris Miller of KMCI petitioned the Federal Communications Commission in the early 1980's to drop Channel 38 into the television table of frequency allocations. Ultimately, the Commission added the frequency after which the Millers filed their application for a construction permit.

The Millers' filing drew three competing applications. One was local and the other two from out of the area. Soon one distant applicant withdrew and the Millers and the other local applicant eventually convinced the Commission that the third remaining applicant was fronting for Media Central, licensee of Channel 62, an existing station in the Lawrence market. The Millers then purchased the interest of the remaining applicant and began efforts

construction and commence on-air operations and service. The response from the local community has been very supportive.

To complicate matters, shortly after KMCI-TV 38 went on-air, February 1, 1988, it was apparent that design problems with the station's new broadcast RF system would not allow the station to maintain authorized visual signal strength. Because the station is located 20 to 30 miles from major population centers, KMCI-TV 38 failed to deliver the audience HSN anticipated. As a result of repeated equipment failures, a protracted dispute between KMCI and NEC America continued for two years. Eventually NEC rebuilt the RF system to meet the station's requirements.

During the first 2 years, Home Shopping Network failed to receive coverage of KMCI's full power signal and with the station's two-year affiliation coming to an end, HSN terminated its agreement with KMCI.

To compound the station's problems, KMCI was financially unable to buy carriage on cable systems to compete in the market.

affiliates from both Kansas City and Topeka ADIs and continues to add more pay per view services. Sunflower has refused cash payment by HSN for carriage of KMCI.

After delivering a full-power broadcast signal for over a year, HSN raised KMCI's hourly compensation on June 15, 1991 to 63% of its rate at sign-on in 1988. Due to excessive legal expenses related to litigation with NEC and less than full HSN revenue

Indian Jr. College. Lawrence has a population of 55,000, many of whom commute to employment opportunities in Kansas City and the state's capital, Topeka. Lawrence is developing as an industrial base which includes plants from major companies such as Hallmark Cards, Quaker Oats, Packer Plastics, King/Bendix Radio, Kmart Distribution, and others. Unemployment is traditionally lower than the national average.

Lawrence Radio and Television Market

<u>Station</u>	<u>Channel</u>	<u>Network/Format</u>
KMCI-TV	38	HSN

Lawrence has five radio stations, 4 FM, 1 AM. Two daily newspapers, the University Daily Kansan and the evening Lawrence Daily Journal World which owns Sunflower Cablevision.

Kansas City Radio and Television Market

In addition to the television stations noted hereinabove, Kansas City, Missouri and its environs have had at least 20 radio stations and one morning daily newspaper, The Kansas City Star which is owned by ABC/Cap Cities.

Topeka Radio and Television Market

In addition to the television stations noted hereinabove, Topeka also has eight radio stations, and one morning daily newspaper, The Topeka Capital-Journal which is owned by the owners of WIBW-TV, AM and FM.

Surrounded by eleven television stations, some 40-odd radio stations and four daily newspapers, KMCI has, like Alice, had to run in order to stay in the same place. Indeed its only financial salvation has been HSN. Without a network affiliation and lacking carriage on a major cable system, KMCI has had a very, very difficult time in remaining on the air, and until recently financially liquid. Should the Commission find HSN programming not in the public interest, KMCI may well go dark.

KMCI Serves the Public Interest

The following facts and figures pertain specifically to Miller, but as well might reflect the public interest broadcasting provided by all HSN stations.

Miller Broadcasting and its principals are fully cognizant that KMCI must be operated in the public interest. Miller is convinced that a HSN program format does constitute public interest broadcasting, but does not rely on that format to confirm that KMCI operation conforms to Commission rules and policies relating to the public interest, convenience and necessity.

For example, KMCI has broadcast during the quarter January 1 - March 31, 1993 programming responsive to the following significant issues confronting Lawrence and the surrounding area:

1. Additional County Commission Seats
2. Operation Immunize
3. Alcohol Programs on Campus/Baker University
4. Alcohol Programs on Campus/Haskell Jr. College
5. Alcohol Programs on Campus/University of Kansas
6. Cancer Support Group
7. Flu Immunizations
8. Smoking Ban/University of Kansas
9. Missing Children
10. Cultural Calendar

Treatment of these issues by KMCI has been during the station's "Viewpoint" program or through other local opportunities. These include the following and the number of times aired.

explained and discussed. Students and staff members commented on what else needs to be done in the area of alcohol abuse. (seven segments).

5. Alcohol Programs on Campus/University of Kansas.

This segment of "Viewpoint" dealt with alcohol abuse as a problem on the campus. Programs available to students were explained and discussed. Students and staff members commented on what else needs to be done in the area of alcohol abuse. (one segment).

6. Cancer Support Group

This community service announcement informed viewers of cancer support group local meeting time, date and place. (fifty-five segments).

7. Flu Immunizations

This community service announcement informed viewers of the availability of free flu walk-in clinic. Announcement included location, time and dates. (sixteen segments).

8. Smoking Ban/University of Kansas

This segment of "Viewpoint" dealt with student and faculty opinions on smoking ban in buildings at the University of Kansas. Bill was passed by State Legislature. (ten segments).

9. Missing Children

This segment involves the location of children reported missing in the KMCI coverage area. Home Shopping Network has successfully located missing children through its national program. KMCI sought to concentrate its efforts toward local missing

children. Several children have been located and the continuing segment is constantly being updated. Idea was provided by Baker University student and KMCI master control operator Patrick Larson (two hundred eighty segments).

10. Cultural Calendar

KMCI's "Cultural Calendar" is a daily calendar listing of cultural events taking place in communities from Kansas City in the east, through Lawrence, to Topeka on the west. Local groups and organizations are urged to send in their events for listing on the screen roll. This program segment has been very well received. The Cultural Calendar runs four times daily and is rotated at various time periods throughout the daily program log.

Children's Programming

In response to the Commission-adopted Report and Order which implemented the Children's Television Act of 1990, KMCI set out to do something different. All other television stations, commercial and educational, were offering several hours of children's programming (predominately cartoons). These programs ran simultaneously in the weekday afternoons and on Saturday mornings. Most of the programs were duplicated several times and in the case of the commercial stations, included heavy promotion of toys, clothing and food items.

KMCI contacted Anita Faddis, a specialist with the Baldwin School District who had previous television experience and had spearheaded the parents as teachers program in Kansas. Plans for

a new local children's program were made which would emphasize learning instead of sex and violence.

In January, 1991 the staff of KMCI, Mrs. Faddis and Baker University Mass Communications Director Rich Bayha developed a plan

2. The plan was entitled "Balance Learning" and was

today's world. "Vegetable Soup" is intended to counter negative, destructive effects of racial prejudice and racial isolation. KMCI is the only station in either of the Kansas City or Topeka television markets to carry "Vegetable Soup". The series was produced from 1975 through 1978 by the New York State Education Department and distributed by the University of Nebraska.

Both children's programs are carried free of commercial messages.

Examples of Community Support

KMCI-TV 38 was presented a bronze plaque by Secretary Sam

President's Club, Kansas State University
Baccalaureate Committee, Baldwin.
Santa Fe Trail Historical Society.

STATION MANAGER/Doris Miller

Board Member Baldwin Community Arts Council.
President's Club, Kansas State University.
Baldwin American Legion Auxiliary.
Northeast Kansas Director for Arts Council, Kansas State University.
Active member, writer and author of local quilters' organizations.
Santa Fe Trail Historical Society.
Annunciation Altar Society.

STATION SALES MANAGER/Christopher Miller

Officer of Baldwin Chamber of Commerce.
Officer of Douglas County Republican Party.
Santa Fe Historical Society.
Baldwin Community Arts Council.

STATION CHIEF ENGINEER/Gary Krohe

Scout Leader, Boy Scouts of America, Troop #59.
Officer SBE, host for SBE meetings for Kansas City chapter.
Provided technical service and advice to radio/television department at Baker University at no charge, Department not funded to pay for tech support.
Regular volunteer at fund raising events for KTWU-TV, channel 11, PBC in Topeka.
Technical writer various magazines, RF broadcast systems and problems.

For past two years KMCI staff has voted to donate Christmas gifts, clothing and food to local needy family rather than exchange gifts. Family is designated by local public school district.
Sponsor Baldwin Baseball Association.
Sponsor Little League.

**Response of Miller Broadcasting, Inc. to
Questions Raised by the Commission in its NPRM**

Throughout the NPRM addressed by these Comments, the Commission has invited interested parties to address several questions raised. Miller offers the following responses.

1. How to define stations subject to this proceeding (para. 5)².

Response: Several methods come to mind, such as basing whether a station should be subject to this proceeding if more than 50% of its total air time is devoted to HSN, or more than 50% of its air time minus issues-programs and children's programs time; or more than 50% of its revenues derived from HSN programming; etc. Or the 50% figure could be adjusted up or down.

Probably the least worst method is the more than 50% of air time devoted to HSN.

Miller is constrained to observe that unless the Commission determines that HSN programming is not in the public interest (and Miller urges that it is in fact in the public interest), this proceeding is moot.

2. How to determine whether the public interest is being served (by HSN stations) (para. 7).

² The paragraph numbers pertain to paragraphs of the NPRM.

Response: This is a can of worms the Commission would do well to avoid if possible. How to determine if any program is in the public interest - other than the extremes of obscenity and indecency, the Commission has eschewed passing on the merits or demerits of program material. The criteria of public acceptance may be only pressure, and HSN programming has received overwhelming public acceptance.

3. "First amendment and other public interest concerns. . ." (para. 7).

Response: The very recent decision of the Supreme Court in Cincinnati v. Discovery Network (see Washington Post story March 25, 1993) which extended First Amendment protection to commercial newspapers may provide underpinning for HSN station protection.

4. Competing demands for spectrum allocated to HSN stations.

Response: Another can of worms. Presumably a contest between (a) an HSN television station and a non-HSN station; or (b) between a HSN broadcaster and a land-mobile, etc. user. Either need be decided on an ad hoc basis (unless the Commission had determined HSN was not in the public interest, in which case there could be no HSN stations). Contest (a) is identical with the present situation presented by multiple applicants for a new TV facility, or a renewal challenge case; contest (b) will produce an apples-and-oranges scenario, usually handled by rule making rather than individual comparisons.

5. Whether the existing license renewal scheme adequately takes into account the competing demands of television broadcasters for the television broadcast spectrum (para. 5).

Response: As worded, the query goes beyond the bounds of the present proceeding, and should be the subject of a separate NPRM, encompassing all of television broadcasting, not just HSN programmed stations.

6. Do broadcasters suffer from potential commercial disadvantages (compared to non-broadcast service) as a result of their Commission-imposed public interest obligations (para. 9).

Response: Certainly they do, but the requirement that television stations broadcast in the public interest (by Issues-Programs and Children's Programs) is a small price to pay for use of a portion of the spectrum, a public resource. Any attempt to eliminate broadcasters' disadvantages would necessitate elimination of all public service programming, a reversal the Commission should be reluctant to take. The disadvantage can be reduced, however, by mandatory carriage on local cable channels.

7. Whether HSN stations are entitled to local cable

Response: Sunflower Cablevision which serves Lawrence apparently has a contractual arrangement with QVC and serves that service on one of its channels. It refuses to carry KMCI, originally on the basis of an insufficient number of available channels. However, Sunflower now provides pay-per-view on channels that could accomodate KMCI. This discrimination severely prejudices Miller.

9. How can the Commission best provide programming diversity and market competition in the context of home shopping services (para. 10).

strictures that radio and television owners recognize, and which have worked reasonably well.

11. Whether home shopping stations should be recognized (and regulated) by rule making, or should be handled on an ad hoc, market-by-market basis (para. 11).

Response: Until and unless the Commission is ready to do a market-by-market in-depth analysis, the matter of home shopping stations is best left to rules and guidelines and to market pressures. If the 1992 Cable Act mandates individual judgments - and this can be concluded only by examination of Congressional reports, debates, etc - an examination Miller is not prepared to do - then the Commission is bound to conduct such individual assessments, or have the Act amended.

Conclusion

The Commission should conclude that HSN is in the public interest. Significant public acceptance is a powerful argument in its form. The television airwaves are nightly (and daily) beset with silly sitcoms and cops-and-robbers, ad nauseam to some viewers, but public acceptance of those programs has declared their existence and continued existence.

The Commission is not equipped in any sense to become a traffic cop of the broadcast media, dictating what programming can be aired and what is forbidden, and it should not pressure to determine, in the face of strong public acceptance, that HSN broadcasting is not in the public interest and therefore should be terminated.

In many cases, termination of HSN would cause stations to go dark, as HSN is their lifeline to financial vitality. That the Commission would hold that the public interest requires no service to HSN service is incredible. All television stations must serve the public interest by issue-programming and children's programming. For the Commission to conclude that carriage of HSN programming sufficiently negates a station's other public interest programming - while still permitting, indeed encouraging, the programming aired by non-HSN stations is to make cultural and

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